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Security Information

31 October 1952

MEMORANDUM FOR: General Counsel

THROUGH: Deputy Director/Administration

FROM: Assistant Director/Personnel

SUBJECT: Exemption of CIA from Performance Rating Act of 1950.

1. The Performance Rating Act of 1950 (P.L. 873, 81st Congress) requires Federal agencies — except those specifically exempted — to establish one or more performance rating programs for evaluating the work performance of employees. In addition, the Act (Sec. 4) stipulates that "no officer or employee of any department shall be given a performance rating, regardless of the name given to such rating, and no such rating shall be used as a basis for any action, except under a performance rating plan approved by the Civil Service Commission as conforming with the requirements of this Act." These provisions of P.L. 873 became effective on 30 December 1950.

2. Uniformly, the Personnel Office has maintained that certain provisions of the Performance Rating Act could not be harmonized with the security obligations of CIA. These conflicting issues were reviewed in a memorandum addressed to your office by the Personnel Director on 29 December 1950 (Tab A); the conclusion stated in that memorandum was that "for the reasons outlined ... it is strongly recommended that appropriate action be initiated without delay to have CIA exempted from the requirements of the Act." Again, on 1 May 1951, the Personnel Director in a memorandum to the D/A, reporting on the unsuccessful results of this Agency's negotiations with the Civil Service Commission noted that "Inasmuch as it has not been possible to reach any mutually satisfactory compromise ... it is the recommendation of this office that exemption of CIA from P.L. 873 be obtained ..."

3. The Career Service Committee in October 1951 formed a Working Group to explore the problem of developing a system of employee appraisal which could be integrated into the Agency's Career Service Program. Even before the Working Group began functioning the Assistant Director for Personnel, then also chairman of the Career Service Committee, stated by memorandum to the D/A that "The Career Service Committee has examined the possible efforts of compliance with the Act (P.L. 873) by CIA. Consequently, it is recommended that immediate action be taken by CIA to request the Congress for exemption from the Act. Although this legislation should be introduced immediately, it is probable that final action would not be forthcoming until June of 1952." This conclusion was reached by the Career Service Committee subsequent to a meeting between representatives of the General Counsel and the Personnel Office, at which time agreement was reached upon the course of action. (Tab B).

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4. The working group on employee evaluation was instructed by the Career Service Committee to devise a plan of employee appraisal responsive to the Agency's requirements. As the working group neared completion of its project (January 1952), the Personnel Office called to your attention its concern that the proposed system differed in certain fundamentals from the criteria established under P.L. 873. It was the feeling of this office that adoption of the new system proposed by the Working Group should be contingent upon Congressional action to exempt CIA from P.L. 873, or upon strong evidence that such Congressional action was imminent.

5. It is my understanding that in March 1952 your office forwarded to the DIA the results of your re-examination of the problem of whether CIA exemption from P.L. 873 should be sought. At that time you proposed that support be requested from the Civil Service Commissioners "for an approach to the Bureau of the Budget and Congress through appropriate committees to seek a specific exemption ..." shortly thereafter the Personnel Director and the Legislative Counsel of CIA discussed the problem with Mr. Joseph Winslow, Legislative Representative of the Civil Service Commission. That official agreed to lend the Commission's support to such request for exemption when presented to the Congress.

6. Meanwhile, the ICI on 13 June 1952 gave official approval to the newly developed Personnel Evaluation Program, incorporated into the final report of the Career Service Committee. Regulations for administering the new program were promulgated on 1 August 1952 (CIA Regulation [REDACTED]). Actual functioning of this program is not far advanced, and many CIA employees are being evaluated, or have already been evaluated, pursuant to the regulations and instructions cited in this paragraph.

7. From a review of the foregoing, it is apparent that the CIA has adopted a position which is explicitly prohibited by the terms of P.L. 873 (paragraph 1, above). Since the enactment of the Performance Rating Act, the Personnel Office has consistently expressed the opinion that the Agency should extricate itself from a difficult situation; on the one hand it was clear to us that the requirements of the Act could not be rationalized to fit security requirements; on the other hand this Agency failed to obtain exemption from the Act at the time of its passage, although a number of other agencies were excepted, including one in the national security category, i.e., the Atomic Energy Commission.

8. This office is apprehensive that employee appeals from adverse administrative actions (e.g., involuntary separations) resulting from unfavorable evaluations made under the Agency evaluation system may well force upon the Civil Service Commission an examination of this Agency's non-compliance with the mandatory provisions of the Performance Rating Act. We believe that the problem is accentuated by the very considerable time lapse since enactment of P.L. 873, during which no approach has been made to the Congress. It would appear to us that against this long delay

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our failure to install a system meeting the requirements of P.L. 673 might at the very least invite very strong criticism on the part of the Commission and other Federal regulatory bodies. It is felt, therefore, that it is a matter of very great importance that, without further delay, a legislative proposal be made to obtain Agency exemption, and that all possible resources be employed to insure the success of this effort.

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Attachments.

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OPD [REDACTED] bks (31 October 1952)

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